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RE: School Districts as Applicant Under the Library Bond Act

Dear Mr. Smith:

This letter provides an informal opinion regarding whether or not school districts may be applicants for funds under the California Public Library Construction and Renovation Bond Act of 2000.

ISSUE PRESENTED

The State Librarian has posed the following questions. "May school districts, defined by Education Code Sections 80-97, 'own and maintain a public library facility,' and if so what steps, if any, do they need to take to do so? In essence may they be applicants for Library Bond Act funds?"

SHORT ANSWER

No, school districts may not own and operate a public library unless they have formed a "school district library district." Therefore, in general, school districts are not proper applicants under the Library Act.

BACKGROUND/ ANALYSIS

The Board's Issuance of Regulations in General

Education Code section 19992 provides that the Board shall adopt rules, regulations, and policies for the implementation of the Library Bond Act. State law provides that when a state agency has the authority to adopt regulations to implement the provisions of the statute that such regulations must be consistent, and not in conflict with, the statute and reasonably necessary to effectuate the purpose of the statute.[1] The Supreme Court has ruled that in reviewing the legality of a regulation, the judicial function is limited to determining whether the regulation (1) is within the scope of the authority conferred to the regulator, and (2) is reasonably necessary to effectuate the purpose of the statute. The Supreme Court has also stated that these issues "do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with a strong presumption of regularity...."[2] As to the first prong, courts do not defer to the agency to determine whether a regulation lies within the scope of the authority delegated by the Legislature but instead use a standard of "respectful nondeference."[3] However, as to the second prong, the Supreme Court has stated that judicial inquiry is confined to "the question whether the classification is arbitrary, capricious or [without] reasonable or rational basis."[4]

Thus, when reviewing the legality of any final regulation, two issues must be addressed. The first issue is whether the Board has authority to issue such regulations. The second issue is whether the regulation, as written, is reasonably necessary to effectuate the law; i.e., are the regulations rational? This memorandum only addresses the first and more stringent prong, as no final language has yet been proposed.

2000 Library Bond Act Requirements

The Library Bond Act requires that a facility for which grant money was received must be dedicated to public library direct service use for a period of not less than 20 years following completion of the project.[5] The Act further provides that if the building ceases to be used in such

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[1] Gov. Code § 11342.2, and see also, *Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 679.

[2] *Yamaha* v. *State Bd. of Equalization* (1998) 19 Cal.4th 1, 11. (citing to *Wallace Berrie & Co.* v. *State Bd. of Equalization* (1985) 40 Cal.3d 60 internal citations removed.)

[3] *Yamaha* v. *State Bd. of Equalization*, *supra*, 19 Cal.4th 1 fn. 4 at 11.

[4] *Yamaha*, *supra*, at 11 citing *Culligan Water Conditioning* v. *State Bd. of Equalization* (1976) 17 Cal.3d 86 internal quotations removed.

[5] Gov. Code § 19999.

a manner the board may recover monies in a suit filed in superior court.[6] Additionally, the Act requires that funds that are received by a recipient be expended only in connection with public library facilities.[7] Lastly, applications are required to be for library facility projects.[8]

Analysis

It is clear from the statutes that Library Bond Act bond funds are only to be used in connection with public library facilities and that these facilities are expected to be used for public library purposes for not less than 20 years after the completion of the project. The Act also grants explicit authority to the Board to enact regulations to implement the statute. Thus, the applicants are already bound by statute to use the facility for library purposes for not less than 20 years after the project is completed. Regulations that simply echo that requirement are consistent with the statute and would, therefore, be lawful.

CONCLUSION

The Board has the power to enact regulations in compliance with the Library Bond Act. Therefore, the Board may require applicants to operate a library facility as is already required by statute.

If you have any questions, or would like to discuss this further, please call me at (916) 445-6998.

Sincerely,

Jennifer K. Rockwell
Deputy Attorney General

For BILL LOCKYER
Attorney General

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[6] Gov. Code §19999(c).

[7] Gov. Code § 19989.

[8] Gov. Code § 19993(a).